

IN THE FAMILY COURT SITTING AT PORTSMOUTH

Case No: PO11/19 & PO12/19

The Courts of Justice  
Winston Churchill Avenue  
Portsmouth  
PO1 2EB

Friday, 8<sup>th</sup> November 2019

Before:  
HIS HONOUR JUDGE SIMMONDS

B E T W E E N:

PROSPECTIVE ADOPTERS

and

MOTHER  
FATHER  
CHILDREN

MR S HOWARD appeared on behalf of the Applicant  
MR A HAND appeared on behalf of the Respondent Mother  
MS K HAMBLETON appeared on behalf of the Respondent Father  
MS S EARLEY appeared on behalf of the Local Authority  
MR M TOOLEY (Solicitor), appeared on behalf of the Children through their Guardian

JUDGMENT  
(For Approval)

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*This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.*

HHJ SIMMONDS:

**Introduction**

1. This is an *ex tempore* judgment at the conclusion of the final hearing in this serial numbered adoption application in respect of two children “A” who was [a date in] 4 March 2015 and therefore aged four years and eight months, and “B” who was born on [a date in] 2015 and therefore aged three years and nine months. I will call them throughout this judgment “the boys” but in doing so I bear in mind at all times their needs individually.
2. The boys are subject to care and placement orders made by me on 6 April 2018. Those placement orders remain in force until an adoption order is made. The prospective adopters bring the application having been represented by Mr Howard. The birth parents oppose the application and have been granted leave to oppose and have been represented, the mother by Mr Hand and the father by Ms Hambleton. I will refer to them throughout as the parents. They have another child together, a little boy “C” born on [a date in] 2018, he is aged one year and nine months. I dealt with the proceedings in respect of that child after the Boys’ proceedings and he remains at home with his parents under a care order made by me on 19 November 2018. The mother has two older children from another relationship (I will refer to them as D & E) which were removed from her care and the father’s care at the same time as the boys. The father has three older children from another relationship, those children do not live with the parents but they have regular contact. The Local Authority has been represented by Ms Earley. The Children’s Guardian is Bethany McFadden and is represented by Mr Tooley.

**The Position of the Parties**

3. The prospective adopters seek an adoption order and oppose the making of an order for direct contact. They are supported by the Local Authority and the Guardian. The parents seek the return of the children to their care, they recognise that they will need a high level of involvement from professionals. If the children are unable to be returned to their care, they seek direct contact for themselves and also to the sibling group.
4. The case has been put by all parties and the parties’ positions are that there are only two realistic options before the Court as outlined by them.

## **The Background**

5. By way of background, the boys were matched with the prospective adopters on 16 April 2018, they were introduced on 14 June 2018 and placed on 20 June 2018. They had a farewell contact with their older siblings D & E on 14 May 2018, and with the parents and C on 18 June 2018. At the time of this hearing therefore, the boys had been placed with the prospective adopters for just over 15 months.
6. In January 2019 the prospective adopters applied to adopt the boys. Directions were given on the papers on 17 January 2019 and, on 25 January the parents applied for leave to oppose, the mother on the 25<sup>th</sup> and the father a few days later on 29 January 2019.
7. At the first hearing on 4 March 2019 I joined the children and I listed the matter for an urgent hearing on 13 March with the prospective adopters to be represented. By then there was a change of position from the parties as to procedure. It was initially thought that the best way forward would be to instruct experts for the Court to determine leave and then move swiftly to the substantive application. However, at that hearing the parties wished the Court to determine leave first and then adjourn the substantive application for the instruction of experts.
8. I gave directions for the leave application which I heard on 18 April 2019. I granted the parents leave to oppose and also gave directions at that hearing for the instruction of Dr Schoeman to provide an assessment of the parents and Dr Blincow, an assessment of the hearing. I directed a pretrial review and directions until this final hearing. I have heard this trial at the Court local to the parents to assist with travel. I have heard it over five days commencing Monday.

## **The Lay Parties**

9. I would wish to pay tribute at the start of this judgment to the conduct of the lay parties and the dignity in which, from when these proceedings commenced that they have conducted themselves. I am quite clear that the prospective adopters, when they met the boys, did not realise that any subsequent adoption application could, or indeed would, be contested. To the parents, they have strived and have changed and, they have never given up on the boys. I have given this judgment therefore extemporaneous as I am clear that any decision cannot wait. I apologise therefore for any errors within it.

## **The Witnesses**

10. I have heard evidence from Dr Blincow and Dr Schoeman, the social worker for Child C and the adoption social worker; the prospective adopters, the parents and the Guardian. All parties have been able to fully participate in the proceedings. The prospective adopters joined by way of the video-link room but gave their evidence in Court and the parents, went to the video-link room. The ability for all parties to participate has been achieved by hard work and skill of the court staff here at Portsmouth, and for which to them I am extremely grateful.
11. The fact that I do not mention something in this extemporaneous judgment does not mean that I have not failed to consider it. I come to my decision having read and considered the evidence carefully and in its totality. I, of course, have had the benefit of being the trial judge, not just in respect of this hearing but in respect of the hearing in respect of the boys and also in respect of C. I have case managed this case from the start.

### **The Human Misery**

12. As a judge sitting in the Family Court, I am used to seeing the pain and upset of parties before me. In this case though it has been palpable, and one set of adults is going to leave the Court heartbroken. I can do nothing to mitigate or avoid that because my focus at all times, must always be on the boys. The parents have turned their lives around as I have said, they come to the Court seeking the return of their boys. The adopters went through the training to be adopters and they tell me that the possibility of a contested adoption hearing was never raised. Adopter 1 told me ‘we thought we were having a happy ever after family’.

### **The Care Judgment**

13. These children are part of a larger sibling group and the concerns within this family have been ongoing since 2009. They centred around neglect, lack of supervision, poor home conditions, drug use, domestic abuse and conflicting relationships. The Local Authority issued proceedings in respect of the boys and their siblings D and E on 18 October 2017 and, on 8 November 2017 all four children were removed to foster care. Child C was born during the proceedings and placed in foster care and the proceedings of Boy C was heard separately.

14. In respect of children D and E, they were placed in E's father's care on 21 February 2018 where they remain. In respect of these boys, I heard the contested final hearing on 4 April 2018. I heard the evidence of a psychologist Dr Schoeman, the parenting assessor Miss Brevitt, the social worker Miss Walker, the parents and the Guardian who then was Mrs Young. The evidence was that the parents had ceased using drugs in December 2017 and I accepted that but, I also was clear that the parents had had a very long history of drug misuse and that this was very early days. Further, in the past there has been a high level of dishonesty about their drug use.
15. The evidence of Dr Schoeman, the Local Authority witnesses and the Guardian were that the parents, although making changes, were at the very beginning of their own recovery, that the boys were making strides in their development and that the parents were not in a position to catch them up. Dr Schoeman told me that they, the parents, needed to learn to parent from scratch and that they would always be behind the development of A and B, that A and B needed parents who were able to meet their needs and these parents were not able to do so. The boys' experience of care by the parents was chaotic, their global needs not met, their father being absent and a mother not bonding with them. They suffered as a result developmental delay and they failed to thrive in all aspects of their life.
16. I found that on the evidence before me, the parents were not able to care for the children in the foreseeable future. I found that the children could not wait and that nothing else would do. A copy of my judgment or a note of it is in the bundle.

### **Child C**

17. Child C was born during the boys' proceedings and initially was placed in foster care. He then moved into the care of his parents at a residential assessment unit X House on 27 July 2018, and remained there with them until being discharged into the community on 19 October 2019. Child C was made subject to a care order by me with a plan to remain at home on 19 November 2018. On 22 October 2019 the Local Authority had taken the decision to apply to discharge the care order in respect of C. I accept and find that he is thriving in the care of the parents because that is the evidence. The health visitor in her letter to the Court dated 1 November 2019 says this:

‘It is remarkable how the parents of C have completely turned their lives around in this period of time. From a health visitor perspective, C is thriving emotionally, physically, developmentally and healthwise. His development

shows that he is stimulated, encouraged and loved, that in hand with a safe and secure and stable home environment in which he will be able to reach his potential’.

18. I heard from C’s social worker Ms Walker this week, she told me as the mental health visitor that C is thriving, there are no safeguarding concerns and that is why Local Authority’s plan is to apply to discharge the care order. As part of their planning they have considered the boys returning to the parent’s care but that did not change the plans of the Local Authority. She has known these parents the longest and she is highly supportive of them. When she was asked directly, because of course she was also the social worker of A and B during those care proceedings, whether she thought from all that she knew, that the parents could meet the needs of A and B alongside C, she said sadly that she did not. She told me that the progress that these parents had made was exceptional

### **The Leave Judgment**

19. On 18 April 2019 I gave the parents leave to oppose the adoption order. I found that there had been a change of circumstances and that the parents had made substantial progress, they were different people to the people I saw at the end of the care proceedings. They had engaged in therapy, worked with professionals, remained drug free, obtained the care of their son C having undergone an intensive parenting assessment in a residential placement. The mother has resumed contact with her older children and I said, and I repeat now, that the parents had made changes beyond what I thought possible at the time of the hearing in respect of the boys. As such, there was solid ground for them seeking leave and this was not a fanciful application. I then balanced the welfare issues and standing back and looking at the case holistically, I granted leave as I did in an extemporary judgment.

### **The Law**

20. The Court cannot make an adoption order unless one of the three conditions pursuant to Section 47 of the Adoption and Children Act 2002 is met. This application was commenced pursuant to the second condition of Section 47(4) in that the children had been placed for adoption by an adoption agency under a placement order.
21. The placement order continues and the initial view of the advocates was that the application

proceeded under the second condition. As I had explained already to the advocates, I do not agree. Having granted the parents leave to oppose the adoption application, the application proceeds under the first condition of Section 47 namely (2).

22. The first condition is that, in the case of each parent or Guardian of the child, the Court is satisfied; (a) that the parent or Guardian consent to the making of the adoption order; (b) that the parent or Guardian has consented under Section 20 (and has not withdrawn the consent) and does not oppose the making of an adoption order, or (c) that the parents or Guardian's consent should be dispensed with. I came to that conclusion, adopting as I do the dictum in permission to appeal hearing of McFarlane LJ at paragraph 11 *Re B-S (Children)* [2013] EWCA 813 when he said this:

‘The effect if leave is given to oppose is that the case can no longer proceed as it was doing under ‘the second condition’ in s 47(4), and the adoption application would fall to be determined at a full hearing under which the “first condition” in s 47(2) would be in play, with the question of whether the child’s welfare requires dispensing with parental consent to adoption being determined at that hearing in the light of the circumstances that then exist’.

23. At the appeal and substantive hearing *Re B-S (Children)* [2013] EWCA Civ 1146, the then President giving the lead judgment agreed at (paragraph 13):

‘So one can see the crucial effect of a parent being given leave to oppose under section 47(5): not merely is the parent able to oppose the making of an adoption order, but the parent, notwithstanding the making of the earlier placement order, is entitled to have the question of whether parental consent should be dispensed with considered afresh and, crucially, considered in the light of current circumstances (which may, as in the present case, be astonishingly different from those when the placement order was made)’.

24. The issue of parental consent being dispensed with brings the test squarely, in my judgment, within the first condition.

25. The welfare throughout the life of A and B is my paramount consideration. I have at the forefront of my mind that fact that in Section 14 of the Act, orders for adoption are extreme, made only when necessary and for the protection of the child’s interest when nothing else will do, and only made in exceptional circumstances and when motivated by the overriding requirement pertaining to that child’s best interests. When coming to my decision I must consider all the realistically available competing options, consider the positive and negative

factors and consider A's and B's welfare globally.

26. I have full regard to the Article 8 rights of all parties, the birth parents of the children and the prospective adopters. On the facts of this case, the right to respect of family life is engaged due to the existence of the close personal ties, the parents' biological relationship and the prospective adopters' factual relationship. Where the rights conflict it is the rights of the children that prevail.
27. Having granted the parents leave I have to reconsider the issue of dispensing with their consent, if I conclude adoption is in the boys' best interest. If I dispense with their consent I must be satisfied that the welfare of the boys requires consent to be dispensed with. Requires connotes imperative rather than desirable or reasonable, so that children's welfare throughout their life must require adoption rather than something short of adoption (Section 52 Adoption and Children Act 2002: *Re P (A Child)* (Placement Orders: Parental Consent) [2008] EWCA Civ 535 apply Article 8. If I dispense with the parent's consent, I do so only if it is both necessary and proportionate to do so.
28. If I make an adoption order, then the issue of post-adoption contact needs to be considered pursuant to Section 51(a) of the Act specifically the factors in subsections 5(a)-(c). I remind myself of the words of the President in *Re B (A Child: Post-Adoption Contact)* [2019] EWCA Civ 29 that: 'Save for there being extremely unusual circumstances, no order will be made to compel adopters to accept contact arrangements with which they do not agree'.

### **The Boys: Then and Now**

#### **The Children at the time of the care placement orders:**

29. Historically both boys have experienced neglect and a failure of their needs being met, this resulted in A being said to being developmentally delayed, nine months at the time of placement in foster care when he was two years and eight months old, being described as food obsessed and B, as demanding attention and being very demanding to ensure that he gets attention, because that is what he had learnt and that is how he got some of his needs met.
30. Both boys on everybody's evidence in the previous proceedings, flourished in foster care. The social worker and the Guardian said that in the four months that they had been in care they had made significant improvements both in respect of their speech, language and development. The hope was that with such improvement, the nine month delay originally seen, with reparative care A would start primary school at an age matching level for his



peers. As the Guardian said in her report:

‘Given the negative parenting they have received whilst in the care of their parents, A and B will be on catch-up and to that end require more than good enough parenting. A and B’s ages are such that any parenting they receive now will shape the way they present in the future and any further gaps in parenting will impact heavily on their meeting their developing and expected milestones. It is therefore important that decisions are made regarding their permanency so that they can establish themselves in the family unit and continue to experience stability’.

*The Boys Now:*

31. As I have said so already in the previous proceedings, it was agreed by all professionals that these children required therapeutic reparenting and Dr Blincow agreed with that during his evidence this week. Child A has now transitioned from nursery to primary school full time, and B is attending nursery. The best summary of the boys now is in the report of the Guardian in which she said this:

‘A and B have been thriving within the care of their respective adopters and have been afforded good consistent care. They are observed to have settled well and have formed strong bonds with their respective adopters and wider adoptive family. All the evidence before the Court indicates that A and B continue to make good progress developmentally and have a positive trajectory for the future’; and later,

‘from my observations both A and B are delightful engaging children who present as confident and settled within their adoptive placement, their different personalities were visible with B being more outgoing, loud and confident in his play and A being slightly quiet and thoughtful, both were able to play independently with each other although sought to involve the adopters in play during my visit. A and B were inquisitive and relaxed in their relationship with their adopters.’

In the words of Dr Blincow they are achieving their optimum potential.

**The Expert Evidence**

32. I can characterise the expert evidence as this. Dr Blincow focussing on the children. Dr

Schoeman focussing on the parents.

33. Dr Blincow is a consultant psychiatrist in all aspects of child and adolescent mental health and tells me that he has over 25 years of experience. I found him to be a balanced, careful and thoughtful witness who approached this difficult and complex case with care. He is the only expert that saw all the parties and the children.
34. He told me that these boys are particularly vulnerable and that in his opinion to remove them now from their adopters would be a high risk, that they have invested emotionally in their placement, that they have received and are receiving reparatory care, and that they were on a trajectory to normalising their emotions and behaviour however, he stressed to me that this remained “a work-in-progress” especially in regards to A.
35. He said that on his assessment the parents did not demonstrate insight into the trauma of the boys and the impact of their failure would be significant, and would outweigh and undermine the benefits of being in their birth family. He was in no doubt that any move would be difficult. In his report he said this; ‘Any child moved at their current stage of development would have their trust in the adult world challenged’.” Child A [and I think he meant child B as well] are more vulnerable than most children of their age and so it would constitute a major challenge to their sense of trust in the adult world. They are therefore likely to show challenging behaviours towards their new carers, would increase problems socially and with emotional regulation as a result. Their rate of learning is likely to stall or regress during such transition for many months after while they settle” That would lead to these boys in his view:

‘there is likely to be ongoing vulnerability to show problems with emotional regulation (i.e. emotional vulnerability, reactivity and problems with soothing) and greater sensitivity/anxiety in social situations particularly, where either A or B perceive that they may miss out or have not had their needs met.’
36. On the basis that the boys require therapeutic reparenting it was hard although he accepted not impossible, for these parents who caused that trauma to then therapeutically reparent, it is sadly harder than it would be that a neutral person would experience. He told me that the progress of the boys with the prospective adopters was optimum and that they were starting to achieve secure attachments and they were at a crucial stage in their reparative work and reparenting.
37. He told me that the risks of placing them and going wrong, are risks to them emotionally,

developmentally and educationally and if that happened, it would affect them not just now but throughout their lives. He accepted that the risks in this case are frontloaded, they are in the next two years the short term as he called it, but that risk and that period is high risk. In that period he can see no advantage of the boys being with their birth family, indeed to him that would be a disadvantage but he accepted that if that short term was positive, then in the medium and long term the balance would alter in favour of the benefits being with the birth family. That would give the boys a sense of belonging and of course, a less complicated history. He told me that those benefits were all predicated on the first stage not causing harm, and such harm that meant the boys could not benefit from the birth family as they grew up.

38. At the conclusion of his evidence I tried to draw together the salient points and he accepted that if the transition, that is the short term, the 12 to 18 month period to the parents' care worked well, and that they the parents were able to meet the needs of the children during that period, then the long term benefits and best interests of the boys would be for them to be with their parents. They would benefit from a sense of identification, belonging and a lifelong relationship with their siblings. If the transition period did not go well, and the boys' needs were not met, then the long term benefits and best interests of the boys would be for them to remain where they are and an adoption order made. For them to continue with their therapeutic reparenting and in that transition period if it went wrong, they would suffer lifelong harm that would include attachment issues.
39. From his assessment and all the evidence, he told me that placement with the parents were very high risk and that the boys should remain where they are. The boys' needs on his assessment and on balance would not be met were they in the care of their parents, they would suffer emotionally, developmentally and educationally and that would affect them throughout their life and that harm would be greater and outweigh the benefits of being with the birth family. Asked about the risks of the boys remaining where they were, he told me that they were the same risks that were normal to an adoptive cohort.
40. Dr Carol Schoeman is a chartered clinical psychologist and assessed the parents in the previous proceedings. She tells me that the parents had developed beyond expectation and are both developing in their psychological function. In her assessment she told me 'my assessment of the parents indicates that it is probable that the parents can parent child A and B well if appropriate support and guidance (given boundary and containment clues) to do so but the position of the children is uncertain?'

41. She was very supportive of the parents, the progress that they had made and that the parents now are learning and have learnt, not to be just good enough parents for C but to parent well. She tells me that the parents are attuned to C from her observations and her assessment of the parents have the ability to attune to the boys as they are proactive and will access support. In her evidence she told me they can parent if the children allow it.
42. She accepted her assessment was limited to the parents and when Dr Blincow gave evidence on the risks and best interests from the children's point of view she accepted and deferred to him. However, accepting and deferring to him did not then stop her from venturing into his assessment, questioning what challenging behaviour the boys would throw up, and she felt that they would show distress but, as for challenging behaviour she said, "we just don't know". It is from that base therefore, the not knowing, that she is satisfied that the parents could probably care. She is not satisfied that these children will show challenging behaviour and based on the parents' determination to work through, they could probably care.
43. It was put to her the parents are missing any empathy for the children coming from what they believe is their forever home back to them, but she told me "she (mother) cannot climb into the children's heads at the moment as she does not know the children, she would need to learn and develop that" but she accepted that if the Court felt the parents were not able to hypothetically step into the children's needs or minds, that would be a concern.

#### **The Local Authority**

44. This is an unusual case and one not experienced before by the adoption social worker, as such it has meant that there has been no meeting between the social worker and the parents since November 2018, and a clear view by the parents that this lack of engagement or interaction, means that the Local Authority have approached this case with a closed mind.
45. I accept that the social worker has approached this case in a manner that means that she saw her role as progressing the adoption and that is where she has focussed her energy. The result of that means that the adoption social worker was unable to provide me with any direct information on the parents. She was though able to tell me about the boys and the prospective adopters.
46. In respect of the boys who she has seen regularly, she told me that they see the prospective adopters as their parents. She told me that the boys have a strong positive sibling relationship although Child A remains hypervigilant with strangers in the home. She told me that in her professional opinion as an experienced adoption social worker, the

prospective adopters are providing the children with reparative care, that these are people that are able to put themselves into the shoes of the children and address the children's needs. They are insightful, they are empathetic and even with these proceedings, have not "pulled back" from the children.

47. The failure of the adoption social worker to engage or to consider the progress of the parents in a face-to-face meeting is a proper criticism of the Local Authority. Given the application before the court the social worker should have met the parents. However, it does not in my judgement represent a fundamental flaw in the Local Authority's evidence. In my judgement the adoption social worker is able without meeting the parents to have full regard to the work being undertaken with the parents by C's social worker who knew them extremely well and that work has been ongoing. I accept that what she told me that the agreed way forward by the parties once leave was given, was to instruct the two experts and then perform the case from that. It is therefore from these sources that the adoption social worker formulated the case on behalf of the Local Authority and was able to address in her evidence two realistic options available to the Court.
48. This is a Local Authority that is very difficult to say approaches this case with a closed mind because they continue to fund therapy in respect of these parents, but also it is a Local Authority that days before the hearing made a decision that the care order in respect of C would be discharged, and all of that must factor, it seems to me, in the Local Authority's decision making process. Therefore adopting the words in *B-S (Children)* I am clear and find that I do have proper evidence both from the Local Authority and from the Guardian that the evidence stresses all the options which are realistically possible, and that they contain an analysis of the arguments for and against. Miss Earley for the Local Authority reminds me that local authorities do not need to take a neutral stance.
49. Further, although there may be criticism of the social worker, that same criticism has not been made of the Guardian and her analysis. There is in my judgement, when you look at the evidence in the totality, no gap that prevents me from undertaking the final balancing of the evidence must be the final decision made.

### **The Parents**

50. I accept that the parents have not taken the decision to oppose the adoption applications lightly. They accept the boys have progressed both with the foster carers and then with the prospective adopters and further, the boys are thriving in the care of the prospective adopters. Their case can be summarised by the mother when she told me 'I can't change the

past, but I can change the future'. I accept that they both have remained drug free; have engaged in support and courses to increase their awareness of the impact of substance misuse upon children; have retained the care of C. They underwent a residential assessment at X House; they have undergone a positive parenting assessment and have attended many courses as outlined in their statement.

51. Although C is subject of a care order the interventions by the Local Authority have reduced substantially, that there are no risks and that that care order is likely to be discharged. Further, that they are not just going to groups but they are either running groups or supporting others as mentors. Their drug tests are negative and I accept and find that these parents have remained drug free since December 2017.
52. The mother's two older children D and E aged 8 and 12 now have regular contact with her and the father and, as a result C but there is a close relationship she tells me between those three children. The contact to those older children is on a Tuesday from school until 7pm and Saturday for the entire day and that the father in this case is involved in the older child's life, taking him to football both on a Thursday and on a Sunday.
53. In evidence it became clear that the older child (E) is also visiting these parents every day on his way to school. In evidence the parents said, for the first time, that the older child can be emotionally unstable as a result of his earlier childhood. He has angry outbursts and at times struggles with his emotions. When the father was asked about this and how it was dealt with I was concerned about the level of hesitation and also the lack of understanding of the problems. It was vague, it did not happen a lot and, "if it was a regular thing we would speak about it" and "we would deal with it" and then finally, "Mother deals with it and it is fine".
54. The father also has three older children aged 19, 17 and 14. He tells me that his older two children are in fulltime employment and he sees both of them and also the youngest child. He is in contact now with his own family and that is a huge change since the events of 2017 where, as a result of his and their lifestyle they did not see each other.
55. The parents continue to attend therapy on a weekly basis and this has been funded to the great credit of the Local Authority. I have letters from their therapist Steve Briggs which are extremely supportive of them, it makes clear that they have engaged fully, that they have made psychological progress; and in his words, the progress they have made has been "extraordinary".
56. The funding for these parents in therapy will continue certainly up until the end of January I

am told. They have sought out help and I am told they have never missed a session of therapy.

57. They accept that they failed the children in the past, the father was an absent parent and the children were raised in a home that was neglectful by parents suffering from drug addiction, and where their needs were not met. The mother accepts she did not bond with the boys and I am clear from the evidence of Dr Blincow, the social worker and the Guardian that there is no ongoing attachment between the boys and the parents. The parents are to these boys, now strangers and the parents, to their credit accepted that.
58. Given the parent's acceptance of all the past, it was therefore a concern that to Dr Blincow, the mother told him that the children were, at this time happy (paragraph 4.1.33), failing to recognise that the children's passivity was as a result of their under-stimulation as a result of little interaction as a result of the care.
59. The mother accepted that she told Dr Blincow the nursery reported that A was thriving within her care and in evidence, accepted that could not have been the case but still maintained that is what the nursery had said. As to the happy comment, she told me the children were happy in the sense that they made the best of a situation, they were as happy as they could be, they made the best of the situation.
60. The father in his written evidence downplayed the state of the home, or the concerns in contact when he said in his final statement that the children continued to have contact after separation and moved to foster care; that they did not show signs of trauma once having contact with us, or indeed before or afterwards. That is contrary to the Guardian's report in those proceedings where she says this:

‘At times A showed a level of frustration at his father due to F not being able to pick up on his cues. A would regress and screech rather than using words, he would become unsettled and would take some persuading to respond positively. The parents are confident if the boys are returned to their care that the boys will settle in their care, because that's what they've done when they've moved from their care to foster care, and foster care to the prospective adopters' care. Although they accept there will be challenges, they are confident that they will be overcome’.
61. I was left with an impression of the parents from what they have said to the professionals, their statements and their evidence that the children returning to their care may present some problems but in general, it would in their view be “fine”. It will be similar to

parenting C and the children's ability to transition would be similar to their transition from them to foster care and foster care to the potential prospective adopters. Their confidence is based or certainly underlined by the fact that they are the birth parents.

62. That is the theme that runs through the evidence of others, it was at the conclusion of Dr Blincow, and can be seen in interviews with Dr Schoeman when the mother said this:

‘We talked about weighing the balance potentially of M and F offering the children not only a home but reparative parenting, keeping in mind that the children have been with the prospective adopters for such a length of time. Mother considers that she can make up the deficit with the children, she believes that the children should be in the care of herself and Father and that they will be able to provide the support the children need especially, as they are assessing the courses and they have learnt such a great deal and come so far as parents’.

‘Mother indicated that she considered that A and B were still very young and that the trauma of their separation from their current potential adopters could be worked with and absorbed by her care of them. She considered that she was in a position now to consider the needs of A and B and that she would access support to help her to do so. She had not considered the support of C would clash with the support of A and B.’

63. There is also the aspect that the children were seen to settle and thrive in two different care environments quickly and she could not envisage that they could not adjust to her care of them as they would have a true sense of belonging with her being their real mother and father being their real father.
64. In evidence she told me that true sense of belonging is because she is the birth mother. She was asked about the children not speaking about the parents and although she accepted that was the case she said, “but I don't have to believe that if I don't want to. I don't want to believe that” and by that, she meant their speaking about them. That it is said, showed a real disconnect between the reality of the boys and the needs of the parents.

### **The Prospective Adopters**

65. The prospective adopters are a same-sex couple that have been in a relationship for nine years and have been engaged since XXX and intend to marry in XXX. Both work in the public sector. They are known as Pops and Daddy. In their statements, prospective adopter one is known as Pops and prospective adopter two as Daddy.



66. In my assessment of them I accept what the Guardian says, that:
- ‘They have undergone a rigorous and thorough assessment by A County Council before being approved adopters. This positive assessment has been demonstrated in practice since A and B were placed in their care, which has resulted in both boys making significant developmental progress, despite the significant delay that they had experienced previously’.
67. There is no doubt in my mind the commitment that they have with the boys. They were linked with the boys because they have the skills that therapeutically repair the children and were able to demonstrate that they were reflective and were able to cope with emotionally and practically demanding situations. They have a large wider family with prospective adoptive grandparents, great-grandparents and many aunts, uncles and cousins. What is clear, is that they are part of a wide and close-knit family and that the boys, from all the evidence, have formed an integral part of that family unit.
68. They tell me that: ‘For the children to be removed from our care and returned to the parents would be extremely traumatic and damage their emotional wellbeing irreparably, and would never be able to recover from this’. In evidence they both came across as child focussed and demonstrated insight and empathy towards the boys and their commitment was obvious. Further, they acknowledged the changes the parents had made commenting at one stage ‘they have done really well and I take my hat off to them’, I am sorry I cannot remember which one of them told me that.
69. I accept that the prospective adopters have, and are providing high quality reparative care to the boys. As to future direct contact and meeting with the parents, I was impressed that their minds were open and that they said to me that they would consider it once the dust was settled. They told me that if they considered the boys would benefit from direct contact, then they would promote it but felt unable today, to commit to any arrangements now.

**The Guardian**

70. Her final report is dated 1 October 2019, she has been present throughout this hearing. She accepts the parents have changed and that they are successfully parenting Child C however, looking at these boys and their individual profiles, she tells me ‘on balance the risks of attempting placing these boys with the parents are too high’ saying ‘while acknowledged that if this were successful, it would give A and B the opportunity to grow up within their birth family, the risk of being unsuccessful having lifelong negative consequences for A and B is too great in my view’. She fully endorsed the evidence and opinion of Blincow.

71. She told me that her assessment and having heard the parents, was that they do not have a full understanding of the reality or the needs of the boys. She stuck to her views in evidence and firmly supported the making of the adoption order in respect of the boys.

### **Discussion**

72. In coming to my decision I look at the boys' future, not in the short term but in the medium and long term reminding myself at all times that the paramount consideration is the boys' welfare throughout their lives. I have been careful to always remind myself that it is their welfare, and not the prospective adopters or the parents, that is my paramount consideration. Further, as the former President in *Re T (Children)* [2015] (The Forensic Process) EWCA Civ 453 remind me this case, "must not become a dispute between the prospective adopters and the birth family albeit diverted in an illegitimate enquiry as to which placement would be better for the child, that is not the question before me".
73. I have had throughout this judgment the factors in Section 1 (4) and the boys' welfare throughout their life at the forefront of my mind, looking briefly at those factors before my finding;

### **The children's ascertainable wishes and feelings**

74. I remind myself that the boys at the age of four years and eight months, and three years and nine months, they do not possess the maturity, insight, perspective or capacity to consider all the risks and advantages of the issues before me. They are not in a position to make decisions and final decisions about their future, that is the responsibility of adults and the Court. I look at their actions and also their knowledge. These boys have said goodbye to their parents, they have been told that the prospective adopters are their forever family and the evidence of the professionals is that they see the prospective adopters as their parents. They have continued to develop in the prospective adopters' care, the evidence is that they are settled and they have become part of a much wider family.
75. Their home therefore is with the applicants however, at the same time children would wish, if at all possible, to be brought up by their birth parents and within sibling groups.

### **The Children's particular needs**

76. Child A suffered considerable developmental delay, and both A and B suffered a disruptive childhood as I have already outlined. They are both in the process of receiving reparative parenting. They have a close sibling bond and I am clear that that bond is essential. They both need security and stability. In my judgement as a result of their life experiences, they need better than good enough care to meet their individual welfare needs.

**The likely aspect of the child throughout his life of having ceased to be a member of the original family and becoming an adopted person.**

77. Within their birth family, they have a parent, children C, D and E and of course, the father's older children. The parents are now also engaged with their own wider family, and as a result making changes in their life. The boys, on the evidence before me do not have a relationship with C and were of course removed in November 2017 from their parents and also D and E. They have no relationship with their wider birth family as that wider birth family was not engaged with them whilst they lived at home with their parents.
78. When the children lived with their birth family the father was absent, the mother was distant and their needs were not met. The evidence from the adoption social worker and the prospective adopters is that the boys do not refer to the family or siblings. If they grow up within their birth family, those relationships that are not established can be established. They can grow up with the sense of history and shared experiences and of course, it removes the complications that the boys would face if adopted and then with to explore their past. In the adoptive placement if there is no direct contact, they will miss out on that ability to establish those lifelong arrangements.

**The Child's age, sex, background and any other child characteristics which the Court or agency consider relevant**

79. I have already set them out clearly in this judgment:
- Any harm (within the meaning of the Children Act 1989, which the child suffered or is at risk of suffering).**
80. I have already set out in this judgment the harm the children suffered in the care of the parents and my judgment in those proceedings can be read alongside this judgment. I will set out the risk of harm with respect to various options before me.

**The relationship with which the children have with relatives, with any person who is the respective adopter with whom the child is placed, with any other person in relation to whom the Court or agency considers a relationship to be relevant including: (1) the likelihood of any such relationship pertaining to the value to the child of it doing so; (2) the ability and willingness of any child's relative or any such person to provide the child with a secure environment in which the child can develop and otherwise, meet the child's needs; and (3) the wishes and feelings of any of the child's relatives or any such person regarding the child.**

81. I have already set out in this judgment the relationships children have and I accept the

submission as to the importance of sibling relationships, they are the most enduring and understanding and that those children C, D and E and the father's own children would want, as is natural, their siblings to be in the care of the birth family. I accept that they have a very close and nurturing relationship with the prospective adopters and also their wider family.

82. The fact that the boys have been with the applicants now for 16 months, does not in itself mean that they should remain there, the test is not short-term harm, it is throughout their life. I have full regard to the boys three other siblings who all have a relationship with their parents and therefore if the boys were living with their parents, they would have a relationship also.
83. The fact is that in respect of the older siblings, they may have little memory and in respect of their younger full sibling they have no established relationship. They are relationships that could and would continue if the boys were placed in the care of a parent.
84. The Guardian in her final report says that A and B, when considering their life experience and journey to date, they have begun to secure attachments to their prospective adopters who have provided high quality nurturing care. As far as they can understand, this is their family and permanent home. In the context of their past trauma and past experiences, it cannot be underestimated how significant the loss would be for A and B, not just for the adopters but also for the loss of their wider adoptive family, peers relationships and schools. Their whole world is their understanding and sense of security would be lost with them having no sense of familiarity, certainty of security for at least 18 months afterwards.
85. The parents tell me and I accept they will do everything in their power to provide the boys with a secure environment.

### **My Findings**

86.
  - (a) Although of course I deal with A and B separately and individually, I am of the firm judgment that what is right for one is right for the other; they cannot be separated.
  - (b) I am satisfied that the boys are thriving in the care of prospective adopters and that they are functioning at their optimum level, they have established bonds and relationships that are significant, and that is a significant factor that I weigh in the balance. For the boys today, this is the most important relationship.
  - (c) These boys need better than good enough care to meet their individual welfare needs,

they need carers that are able to pre-empt and respond in the moment. Any carer needs to have those skill now, the boys cannot wait.

- (d) I accept the evidence of the social worker and the Guardian that the adoptive placement is in the category of low risk for an adoptive placement breakdown. There is of course a risk of placement breakdown for the boys in their teenage years, but I accept the evidence of the Guardian that the assessment and profile of these particular adopters brings into the low range category.
- (e) There has been a significant change in the parents and I give them full credit for that. Those changes, adopting the words of C's social worker are rare, the parents have parented C to a high standard and the Local Authority intend to apply to discharge the care order.
- (f) The parents have an ongoing and significant relationship with D and E, and also the father's other children. If A and B were in the care of their parents they would be able to establish relationships with those siblings (and C).
- (g) The children's experience of being cared for by their parents, the absent father and the distant mother means on balance there is no relationship between them and their parents at this time.
- (h) I accept the evidence of Dr Blincow that the parents do not appreciate or accept the difficulties of the children returning to their care. This was borne out in their evidence and I accept and prefer his assessment of their position and insight which is sadly, in my judgement, lacking. This includes the failure to mention the emotional dysregulation of the oldest child, the vagueness given the work that they have done and how it is being dealt with and the mother's need to think the children speak of her when they do not.
- (i) I prefer the opinion of Dr Blincow to Dr Schoeman that although the parents have the intellectual understanding of the impact on the children, they do not have a realistic appreciation of what is involved as they attach weight on being the birth parents and their needs, rather than looking at it through the needs of the children. In coming to that finding I have read carefully letters from their therapist, looking at the progress they have made in respect of C, and the evidence of Dr Schoeman, I though find that Dr Blincow is the expert best placed to provide a holistic overview of the case, he was the most measured and careful of the two expert witness and I come to that finding coupled with the parents own evidence and my assessment of that evidence.
- (j) Any transition would be very difficult and traumatic and it is fundamentally different

from the moves from the parents to foster care and foster care to adopters. The initial move was from a home that was unsafe and their needs were not being met to a home that would meet their needs. The transition from foster care to adopters was one where the children themselves had been properly prepared for. Going from adopters to strangers where there only memories may be of being scared and neglect is very different.

- (k) There is a real risk although I cannot quantify, is real and substantial on the evidence of Dr Blincow, the social worker and the Guardian that the children themselves will not permit the parents to reparent them because of that life history.
- (l) The relationship between the boys is close, that is to them the most important sibling relationship. If they are placed in an environment that their needs are not met, the relationship itself is at risk and they will revert, as Blincow told me, of A being withdrawn and self-soothing and B being demanding, and their relationship as a result would be damaged.
- (m) Given the boys' history, permanence, routine and stability is fundamental to their continued welfare and development and that they are not, on the evidence, able to make a further move at this time. That move would affect them in the long term and affect them throughout their lives. I accept that such a move would be a high risk, it would involve on balance, immediate and significant levels of trauma, distress and loss. The parents, in my judgement and accepting as I do the evidence of Dr Blincow, would not be equipped or able to have the insight on balance to deal with this and the placement would either break down or the children's needs would not be met and they would suffer harm. I accept the evidence of Dr Blincow. Their needs on such a move on balance would not be met, they would suffer emotionally, developmentally and educationally. That would affect them, in my judgement throughout their life and that harm would be greater and outweigh the benefits of being with their birth family.
- (n) There is a clear risk that at best the boys would plateau in their development, but emotionally they will revert, unable to move from reparative parenting suffering loss and problems with attachment that will be lifelong.
- (o) In my judgement the parents are operating at the maximum capacity in respect of child C, they are enjoying a role in the lives of D and E and addressing their own ongoing needs. In my judgement to place the boys back to them is likely to make a placement untenable for everyone involved and on the evidence, the parents will not be able to

meet the needs of A and B. Although willing, the evidence on balance is that they will be unable to provide the care that these boys need. These boys cannot wait.

(p) The risks of the boys remaining with their prospective adopters is, on all the evidence, small in the short and medium term. In the long term the boys are likely to question their background but I accept that these adopters have been exceptional to date and I am clear that they will support the boys fully during this period to mitigate any risk. Due to these proceedings life story work has stalled but, that is now imperative to support the placement. These children will need a narrative to be able to move forward into adolescence.

### **Conclusion**

87. I have to ask myself is this interference necessary and proportionate and nothing else will do, and that it meets the lifelong needs for the boys. As the Strasbourg Court said in *YC v United Kingdom* (2012) 55 EHRR 967, para 134:

‘Family ties may only be severed in very exceptional circumstances and...everything must be done to preserve personal relations and, where appropriate, to “rebuild” the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing’.

88. To the boys, Pops and Daddy are just that, they are their parents and for them they are their forever family. I accept the parents are committed but, this is about the boys, their life story, their experiences, their needs and their emotional vulnerability. In my judgement their welfare needs are so high that a move to their parents is not in their long term best interests.

89. Although I accept that adoption has risks, the evidence before me in terms of adoptive breakdown is low. I ask myself rhetorically how can I square the circle of these boys who no longer belonging to the birth family when C is at home, and D and E visit regularly, and the answer is that the needs of A and B and their welfare throughout their life is my paramount consideration and their needs demand the placement away from the family.

90. My task, when balancing all the factors and applying my findings is to come to a decision looking at the welfare of the boys throughout their life. The risks of them moving in terms of their own development and vulnerability are greater in my judgement than the risks of remaining where they are, with permanence and stability and the prospect of them fulfilling the potential throughout their lives. I am not satisfied, even with their changes, that the

parents are able to meet the needs of the boys. The loss they will suffer from growing up in the family and have their siblings is outweighed by being adopted children in a placement that meets their needs.

91. Their welfare demands in my judgement when I look holistically and throughout their life at an adoption order, I come to that decision firmly taking as I must, not the short term or transitional problems but their welfare taken individually in the medium and long term, considering all the evidence and undertakings as I have done, the balancing exercise at the time of my findings as set out above. I am driven by all the evidence to the conclusion that the boys need to remain where they are, and that has to be a secure and stable placement and only an adoption order will achieve that. Nothing else will do. That order is both necessary and proportionate and as a direct result their welfare requires consent of the parents to be dispensed with.
92. Although the parents have done extremely well, the test is what the boys need, not what they have done. The risks are sadly too high, the long term benefits of the boys being with the parents disappear in my judgement because the initial stages will fail on balance.

### **Contact**

93. The prospective adopters oppose contact and the parents made it clear from the start that they wished the boys home. That is known to the prospective adopters. In my judgement that knowledge means that for contact to take place there will be a serious risk to the disruption of the placement. The prospective adopters have agreed to reconsider the issue of contact with both the siblings and their parents after life story work, and once the dust is settled. I found them genuine and caring individuals who will put the needs of the boys first.
94. None of the professional witnesses advocate direct contact at this time. They all see the benefits in the long term but are clear that now is not the right time. The dust needs to settle, the children need to have their life story work undertaken, the parents need to be able to see and accept their changing role in the children's lives.
95. I have been referred to the UEA research on contact after adoption and for contact to work you need to have the right adopters, the children in the right place and the birth parents in the right place. At this time none of those factors are present but I hope in time they may be, and that contact and by that I mean direct contact, either with the birth parents or the siblings can be considered, and that the Local Authority needs to assist the prospective



adopts and the family, perhaps next summer in reviewing it. It is though impossible for me on the facts of this case to say anything more than that.

96. I accept on the evidence before me that save for the agreed indirect contact twice a year, there should be no order for contact.

**Decision**

97. I dispense with the consent of the parents and make the adoption order as sought. To the parents in this judgment, and so that the boys can read it in the future, I will say this. I acknowledge their hard work, I acknowledge their care for C. I have enormous admiration for them. I cannot be motivated by my admiration of what they have achieved. If I could, I would make a different order. I must focus on the needs of the boys and it is that focus that has led me to the conclusion that nothing else save adoption will do.

**End of Judgment**

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